

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Aging and Independent Living

3 Division of Operations and Support

4 (Amended After Comments)

5 910 KAR 1:240. Certification of assisted-living communities.

6 RELATES TO: KRS Chapter 13B, 17.165(1), (2), 194A.060(1), 194A.700-729,
7 209.030, 216.300(1), 216.595, 216.789, 216.793

8 STATUTORY AUTHORITY: KRS 194A.050(1), 194A.707(1), (9)

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the
10 Cabinet for Health and Family Services to promulgate administrative regulations
11 necessary under applicable state laws to protect, develop, and maintain the health,
12 personal dignity, integrity, and sufficiency of the individual citizens of the
13 commonwealth. KRS 194A.707(1) and (2) require [~~requires~~] the cabinet to promulgate
14 an administrative regulation establishing an initial and annual certification review
15 process for assisted-living communities that shall include an on-site visit and
16 procedures related to applying for, reviewing, and approving, denying, or revoking
17 certification, as well as the conduct of hearings upon appeals as governed by KRS
18 Chapter 13B. This administrative regulation establishes the certification process for
19 assisted-living communities.

20 Section 1. Definitions. (1) "Activities of daily living" is defined by KRS
21 194A.700(1).

1 (2) "Ambulatory" means the ability to walk without assistance.

2 (3) "Applicant" means the owner or manager who represents a business seeking
3 initial or annual certification as an assisted-living community.

4 (4) "Assisted-living community" is defined by KRS 194A.700(4).

5 (5) "Certification review" means the process of reviewing applications and issuing
6 certification for an assisted-living community.

7 (6) "Client", "resident", or "tenant" is defined by KRS 194A.700(5).

8 (7) "Client's designated representative" means a person identified in a document
9 signed and dated by the client, client's guardian, or attorney-in-fact identifying a
10 representative authorized to prepare or direct medication pursuant to KRS 194A.700(3).

11 (8) "Danger" is defined by KRS 194A.700(6).

12 (9) "Functional needs assessment" means the client data required by KRS
13 194A.705(5)(a) and (b).

14 (10) "Instrumental activities of daily living" is defined by 194A.700(9).

15 (11) "Licensed healthcare professional" is defined by KRS 216.300(1).

16 (12) "Living unit" is defined by KRS 194A.700(10).

17 (13) "Mobile non-ambulatory" is defined by KRS 194A.700(11).

18 (14) "Plan of correction" is defined by KRS 194A.700(12).

19 (15) "Statement of danger" is defined by KRS 194A.700(13).

20 (16) "Statement of noncompliance" is defined by KRS 194A.700(14).

21 (17) "Temporary condition" means a condition that affects a client as follows:

22 (a) The client loses mobility either before or after entering a lease agreement with
23 the assisted-living community but is expected to regain mobility within six (6) months of

1 loss of ambulation or mobile nonambulation; is documented by a licensed healthcare
2 professional who is not the owner, manager, or employee of the assisted-living
3 community; and the assisted-living community has a written plan in place to ensure that
4 the client is not a danger; or

5 (b)1. The client loses mobility after entering a lease agreement;

6 2. The client is not expected to regain mobility;

7 3. Hospice or similar end-of-life services are provided in accordance with KRS
8 194A.705(2) documented by hospice or a licensed health care professional; and

9 4. The assisted-living community has a written plan in place to ensure that the
10 client is not a danger.

11 Section 2. Application and Fees for Initial Certification Review. (1) For initial
12 certification an applicant shall, at least sixty (60) days prior to a planned opening, file
13 with the department:

14 (a) A completed DAIL-ALC-1, Assisted-Living Community Certification
15 Application;

16 (b) A copy of a blank lease agreement and any documentation incorporated by
17 reference into the lease agreement;

18 (c) A copy of written material used to market the proposed assisted-living
19 community, including material that markets offered special programming, staffing, or
20 training in accordance with KRS 194A.713(11);

21 (d) The floor plan of the proposed assisted-living community identifying the:

22 1. Living units, including features that meet the requirements of KRS
23 194A.703(1);

2. Central dining area;
3. Laundry facility; and
4. Central living room; and

(e) A nonrefundable application ~~[certification]~~ fee **for applications submitted for certification beginning July 1, 2019 shall be:**

1. **Forty (40) [In the amount of \$1,000 plus sixty (60)]** dollars per unit requested to be certified, according to the DAIL-ALC-1, Assisted-Living Community Certification Application, **in addition to the following fee schedule:**

(a) 100 or more units \$2000;

(b) 75 – 99 units \$1750;

(c) 50 – 74 units \$1500;

(d) 25 – 49 units \$1000; or

(e) < 25 units \$500 [for applications submitted for certification beginning

July 1, 2019] ~~[Assessed by the department in accordance with KRS 194A.707(8)]~~;

2. Made payable to the Kentucky State Treasurer; and

3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621.

(2) The applicant shall notify the department upon occupancy of five (5) residents in the assisted-living community.

Section 3. Application and Fees for Annual Certification Review. The department shall renew a certification if an assisted-living community:

(1) Has obtained its initial certification in accordance with Section 5 of this

administrative regulation; and

(2) Submits to the department annually by July 1:

(a) A completed DAIL-ALC-1, Assisted-Living Community Certification Application;

(b) The documentation required by Section 2(1)(a) through (d) of this administrative regulation, if changes have occurred since the previous certification; and

(c) The nonrefundable annual application and certification fee, that beginning July 1, 2019, shall be

1. ~~[in the amount of] Forty (40) [\$500 plus sixty (60)]~~ dollars per certified unit, in addition to the following fee schedule:

a. 100 or more units \$2000;

b. 75 – 99 units \$1750;

c. 30 – 74 units \$1500;

d. 25 – 49 units \$1000; or

e. < 25 units \$500; ~~[that shall be:]~~

2. Made payable to the Kentucky State Treasurer; and

3. Mailed to the Department for Aging and Independent Living, 275 East Main Street, Frankfort, Kentucky 40621~~[required by Section 2(1)(e) of this administrative regulation].~~

(3) The 2019 annual certification fee may be made in payments over six (6) months if:

(a) There is a documented hardship; and

(b) The payments are approved by the department's commissioner.

Section 4. Change in an Assisted-Living Community. (1) If there is an increase in the number of living units, an assisted-living community shall reapply for certification with the department:

(a) In accordance with Section 2(1) of this administrative regulation; and

(b) Not less than sixty (60) days prior to the increase.

(2) If the increase in units occurs before or after the required annual certification date, the certification fee shall be sixty (60) ~~[twenty (20)]~~ dollars per each additional unit.

(3) If there is a decrease in the number of living units, an assisted-living community shall notify the department within sixty (60) days of the decrease.

(4) If there is a change of more than fifty (50) percent interest in ownership of an assisted-living community, the new owner shall apply for certification:

(a) By following the procedures in Section 3 of this administrative regulation; and

(b) Within thirty (30) days of the change of owners.

(5) An assisted-living community shall:

(a) Notify the department in writing:

1. Within thirty (30) days of a name or mailing address change for the assisted-living community or the applicant; or

2. At least sixty (60) days prior to termination of operation; and

(b) Notify a client of termination of operation sixty (60) days prior to closure unless there is sudden termination due to:

1. Fire;

2. Natural disaster; or

3. Closure by a local, state, or federal agency.

Section 5. Initial Certification of an Assisted-Living Community. If department staff determines that an applicant for initial certification meets the application requirements specified in Section 2(1) of this administrative regulation, the department shall:

(1) Consider the application process complete;

(2) Notify the applicant of operation status within ten (10) business days of receipt of the completed DAIL-ALC-1, Assisted-Living Community Certification Application; and

(3) Conduct an announced on-site review.

Section 6. Annual Certification of an Assisted-Living Community. If department staff determines that an applicant for annual certification meets the application requirements specified in Section 3 of this administrative regulation, the department shall:

(1) Consider the application process complete; and

(2) Conduct an unannounced on-site review pursuant to KRS 194A.707(2)(b) or (c).

Section 7. On-Site Review of an Assisted-Living Community. (1)(a) A representative of the department conducting a certification review shall not disclose information made confidential by KRS 194A.060(1).

(b) A confidential interview with a client or access to a client's living unit shall be subject to the client's oral or written consent.

(2) The on-site review shall consist of:

(a) Review of staffing pursuant to KRS 194A.717(1);

1 (b) Review of employment records in accordance with subsection (3) of this
2 section;

3 (c) Verification that an employee reads and agrees to the policy and procedures
4 of the assisted-living community regarding communicable disease pursuant to KRS
5 194A.717(4);

6 (d) Documentation of:

7 1. Completion of employee orientation:

8 a. Pursuant to KRS 194A.719(1); and

9 b. Within ninety (90) days of the date of hire; and

10 2. Annual in-service education pursuant to KRS 194.719(2);

11 (e) Verification of compliance with the applicable building and life safety codes in
12 accordance with KRS 194A.703(3);

13 (f) Review of client records in accordance with subsection (4) of this section;

14 (g) Review of an assisted-living community's policies and procedures for
15 compliance with KRS 194A.700 through 194A.729 using a DAIL-ALC-2, Assisted-Living
16 Community Certification Checklist;

17 (h) Review of an assisted-living community's written service provision and
18 practices in accordance with subsection (5) of this section; and

19 (i) Review of any documentation or records to ensure compliance pursuant to
20 KRS 194A.707(10).

21 (3) Review of Employment Records.

22 (a) During the on-site review, the following employment records shall be
23 reviewed, except as provided in paragraph (b) of this subsection:

1 1. An employment application that shall contain a criminal record check notice
2 pursuant to KRS 216.793(1);

3 2. A criminal record check that shall:

4 a. Be requested in accordance with KRS 216.789(3);

5 b. Be applied for no sooner than forty-five (45) days prior to but no later than
6 seven (7) days following an employee's first day of work;

7 c. Be checked every other year through the Kentucky Justice and Public Safety
8 Cabinet or Administrative Office of the Courts;

9 d. Include a criminal record check upon hire from any state in which the
10 employee lived outside of Kentucky in the last three (3) years; and

11 e. Include a criminal record check at least every other year from the state in
12 which the employee resides if the employee maintains residency outside of Kentucky;
13 and

14 3. A check of the central registry, the adult protective services caregiver
15 misconduct registry, and nurse aide [~~Abuse~~] registry that shall:

16 a. Be performed on an employee upon the initial date of hire and at least
17 annually thereafter; and

18 b. Show that the employee was not found on the registries.

19 (b) An assisted living community may use Kentucky's national background check
20 program established by 906 KAR 1:190 to satisfy the background check requirements of
21 this subsection.

22 (4) Review of Client Records. During the on-site review, the following client
23 records shall be reviewed:

- (a) A completed client functional needs assessment that shall:
1. Be completed:
 - a. Upon move in;
 - b. Once every twelve (12) months thereafter; and
 - c. As needed due to a change in function or condition;
 2. Be administered by a person with at least:
 - a. A bachelor's degree in health or human services~~[service]~~ or a related field;
 - b. An associate's degree in health or human services or a related field and at least one (1) year of experience working with the elderly or conducting assessments; or
 - c. A high school diploma or its equivalency and two (2) years of experience working with the elderly or conducting assessments;
 3. Assess to ensure the client meets the eligibility requirements for assisted-living pursuant to KRS 194A.711 and 194A.700(2);
 4. Reflect the client's ability to perform activities of daily living and instrumental activities of daily living pursuant to KRS 194A.700(2)~~[194A.705(5)]~~; and
 5. Be provided to the client pursuant to KRS 194A.705(5)~~[(a)]~~;
 - (b) Personal preferences and social factors that shall be updated at least every two (2) years;
 - (c) A signed lease with all attachments;
 - (d) Documentation of a client's designated representative, if applicable; and
 - (e) Documentation that the client received a copy of the assisted-living community's cardiopulmonary resuscitation policies pursuant to KRS 194A.719(1)(d).
 - (5) Review of Written Service Provision and Practices. The on-site review shall

review an assisted-living community's written service provision and practices related to:

(a) Assistance with self-administration of medication in accordance with KRS 194A.705(1)(d), which, for medications not preset in a medication organizer or single dose unit container as described in KRS 194A.700(3)(a), may include but shall not exceed the following staff actions if the client requests assistance:

1. Providing the client with a medication reminder;
2. Reading the medication's label to the client, and confirming that the medication is being taken by the client for whom it is prescribed; and
3. Opening the medication container or dosage package, but not handling or removing the medication;

(b) Health services, delivered by assisted-living staff, which shall be reported in compliance with KRS 194A.709(1);

(c) Documentation in a client's file:

1. From a licensed health care professional defined by KRS 216.300(1) or entity providing the health service to the client:

- a. Requested of the client by the assisted-living community; and
 - b. That states the client has a temporary condition pursuant to KRS 194A.711(1);
- and

2. From the assisted-living community to ensure that the client is not a danger, including if hospice or similar end-of-life services are provided;

(d) Compliance with KRS 194A.713(11), 194A.719(1)(j), and 216.595 regarding special programming, staffing, or training that may be provided to a client of an assisted-living community if the assisted-living community:

1 1. Ensures a client's functional needs assessment that:

2 a. Reflects the client's abilities as specified in subsection (4)(a)4 of this section;

3 and

4 b. Shall be updated at least annually; and

5 2. Complies with the requirements of KRS 216.595; and

6 (e) Compliance with a department approved waiver request in accordance with
7 Section 8 of this administrative regulation.

8 (6) The department may, pursuant to KRS 194A.707 **(11)** ~~[(40)]~~, request
9 additional information to ensure an assisted-living community complies with KRS
10 194A.700-729 and 216.789(1).

11 (7) Prior to completion of the on-site visit at the assisted-living community, a
12 department representative shall hold a meeting with the assisted-living community
13 manager or designee to discuss the preliminary results of the on-site visit.

14 Section 8. Waiver of Building Requirements. (1) Pursuant to KRS 216.595(3), an
15 assisted-living community may request a waiver from the department regarding building
16 requirements to address the specialized needs of individuals with Alzheimer's disease
17 or other brain disorders.

18 (2) The department shall:

19 (a) Review the waiver request for approval; and

20 (b) Not waive the building and life safety codes established in KRS 194A.703(3).

21 (3) An assisted-living community shall not alter the building requirements
22 established in KRS 194A.703(1) and (2) without department approval.

23 Section 9. Assisted-living On-Site Review Findings. (1) The department shall:

1 (a) Document any noncompliance with KRS 194A.700 through 194A.729 or this
2 administrative regulation found during an on-site review on the DAIL-ALC-2, Assisted-
3 Living Community Certification Checklist; and

4 (b) Submit the finding of noncompliance to the applicant:

5 1. On a statement of noncompliance located on the DAIL-ALC-3, Assisted-Living
6 Community Statement of Noncompliance and Plan of Correction; and

7 2. Unless the finding is due to a client being a danger pursuant to Subsection (9)
8 of this section, within fifteen (15) business days upon completion of the on-site review.

9 (2)(a) The assisted-living community shall complete a plan of correction on the
10 DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and Plan of
11 Correction and submit the form to the department within fifteen (15) business days of
12 receipt of the notice of noncompliance.

13 (b) The assisted-living community shall specify in the plan the dates by which the
14 noncompliance shall be corrected.

15 (3) The department shall notify the applicant in writing within fifteen (15) business
16 days of receipt of the plan of correction:

17 (a) Whether the plan of correction is approved or not approved; and

18 (b) The reasons for the department's decision.

19 (4)(a) If the plan of correction is approved and the department determines a
20 follow-up on-site review is unnecessary, the department shall issue a certification
21 certificate.

22 (b) The assisted-living community shall post the certificate in a public area.

23 (5) If the plan of correction is not approved, the applicant shall submit to the

department an amended plan of correction within fifteen (15) business days of receipt of notice the plan was not approved.

(6) If the department determines after reviewing the amended plan of correction that certification may be denied or revoked, the department shall notify the assisted-living community within ten (10) business days of the determination and of the following rights~~[with the]~~:

(a) The opportunity for an informal dispute resolution meeting:

1. Between the department and the assisted-living community;

2. To be held within fifteen (15) days of the assisted-living community's receipt of the notice; and

3. To address a dispute, including the provision of additional documentation or support materials; and

(b) Appeal rights as specified in Section 12 of this administrative regulation if:

1. An informal dispute is not requested; or

2. A dispute is not resolved with the informal dispute resolution.

(7) If an applicant meets all the requirements on the DAIL-ALC-2, Assisted-Living Community Certification Checklist, the department shall issue a certification certificate verifying its status.

(8) The assisted-living community shall post the certification certificate in a public area.

(9) If the department finds during a complaint or certification review that a client is a danger, the department shall:

(a) Immediately notify the assisted-living community as established in Section

7(7) of this administrative regulation; and

(b) Provide the DAIL-ALC-4, Statement of Danger to the assisted-living community.

(10) Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m. eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement of Danger, the assisted-living community shall begin to implement a plan to correct the danger in accordance with Section 10(2)(e)1 or 2 of this administrative regulation.

(11) The department shall make a report of suspected abuse, neglect, or exploitation to Adult Protective Services in accordance with KRS 209.030(3).

(12) The department may conduct additional on-site visits pursuant to KRS 194A.707~~(11)~~ [(10)].

Section 10. Denial and Revocation of Certification. (1) Certification shall be denied or revoked if:

(a)1. The department determines upon a complaint or certification review that an assisted-living community knowingly employs any individual convicted of an offense prohibited by KRS 216.789(1) or 216.789(2) as disclosed by the individual's employment application or a criminal records check and if the assisted-living community fails to immediately terminate the employment upon the department's finding; or

2. The same repeat violation of subparagraph 1 of this paragraph is found by the department within a three (3) year period; or

(b) An assisted-living community or applicant fails to submit a plan of correction to the department as specified in Section 9(2) through (7) of this administrative

1 regulation.

2 (2) Certification may be denied or revoked if an assisted-living community:

3 (a) Fails to apply for certification as specified in Sections 2(1), 3(1), or 4(1) of this
4 administrative regulation;

5 (b) Submits a completed DAIL-ALC-1, Assisted-Living Community Certification
6 Application more than fifteen (15) days late for two (2) consecutive years;

7 (c) Fails to submit a completed DAIL-ALC-1, Assisted-Living Community
8 Certification Application within thirty (30) days of July 1 annually;

9 (d) Fails to implement its most recent approved plan of correction:

10 1. Under current ownership; and

11 2. Within the plan of correction's specified timeframe on the DAIL-ALC-3,
12 Assisted-Living Community Statement of Noncompliance and Plan of Correction;

13 (e) Fails to comply with one (1) of the following requirements if the department
14 finds that a client is a danger and the department initially verifies those findings in
15 writing pursuant to Section 9(9) of this administrative regulation:

16 1. Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m.
17 eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement
18 of Danger, the assisted-living community shall submit a written response to the
19 department that confirms how the danger has been eliminated or why the danger is
20 disputed, with submission occurring via:

21 a. Email;

22 b. Facsimile transmission;

23 c. Delivery to the department by hand;

1 d. United States mail; or

2 e. Courier service; or

3 2. Within forty-eight (48) hours, unless issued on a Friday and then by 4:30 p.m.
4 eastern standard time of the next business day, of receiving the DAIL-ALC-4, Statement
5 of Danger, the assisted-living community shall:

6 a. Initiate a move-out notice and begin the process of assisting the client to find
7 appropriate living arrangements pursuant to KRS 194A.705(4); and

8 b. Submit a written response to the department that confirms the assisted-living
9 community took the required action, with submission occurring via:

10 (i) Email;

11 (ii) Facsimile transmission;

12 (iii) Delivery to the department by hand;

13 (iv) United States mail; or

14 (v) Courier service; or

15 (f) Except as provided in subsection (3) of this section, fails to initiate the
16 requirements of paragraph (e)2 of this subsection, if the department:

17 1. Notifies the assisted-living community in writing that the client remains a
18 danger; and

19 2. Does not accept the assisted-living community's written response pursuant to
20 paragraph (e)1 of this subsection.

21 (3) If, after reviewing the assisted-living community's written response pursuant
22 to subsection (2)(e)1 of this section, the department determines the client remains a
23 danger, the department shall notify the assisted-living community in writing that:

1 (a) Certification may be denied or revoked;

2 (b) The assisted-living community has the right to an informal dispute resolution
3 meeting:

4 1. Between the department and the assisted-living community;

5 2. For the purpose of attempting to resolve a dispute, including the provision of
6 additional documentation or support materials; and

7 3. To be requested by the assisted-living community in writing within three (3)
8 business days of receiving the department's written notice; and

9 (c) It has appeal rights pursuant to Section 12 of this administrative regulation if:

10 1. An informal dispute resolution meeting is not requested; or

11 2. A dispute is not resolved with the informal dispute resolution meeting.

12 (4) The department shall issue a written notice to the assisted-living community if
13 the department determines:

14 (a)1. A danger is unsubstantiated; or

15 2. The danger has been eliminated; or

16 (b) To deny or revoke certification following an informal dispute resolution
17 meeting pursuant to subsection (3)(b) of this section.

18 (5)(a) If an assisted-living community continues to operate after its certification is
19 revoked and fails to request an informal dispute resolution meeting or an administrative
20 hearing pursuant to Section 12 of this administrative regulation to resolve a danger
21 dispute, the assisted-living community may be fined in accordance with KRS 194A.723.

22 (b) The fine shall be paid as specified in Section 11(1) of this administrative
23 regulation.

1 Section 11. Collection of Fees and Fines. (1) An entity or business found to be in
2 violation of KRS 194A.723 and [~~pursuant to KRS 194A.724~~] assessed a penalty
3 pursuant to KRS 194A.724 shall make a check payable to the Kentucky State Treasurer
4 and mail it to the Department for Aging and Independent Living, 275 East Main Street,
5 Frankfort, Kentucky 40621.

6 (2) A party aggrieved by a determination of the department may appeal the
7 determination or the fine in accordance with KRS Chapter 13B.

8 (3) The fee established for the notification of conditional compliance to a lender
9 after review of the architectural drawings and lease agreement, pursuant to KRS
10 194A.729, shall be \$250.

11 Section 12. Right to Appeal Decision and Hearings. (1) If the department
12 determines that a certification shall be denied or revoked, the applicant shall be notified
13 of the right to appeal the determination:

14 (a) By certified mail; and

15 (b) Within ten (10) days of determination.

16 (2) To request an administrative hearing, an applicant shall send a written
17 request to the department within thirty (30) days of receipt of a written notice of:

18 (a) Nonapproval of the amended plan of correction; or

19 (b) Denial or revocation of certification.

20 (3) After receipt of the request for a hearing, the cabinet shall conduct a hearing
21 pursuant to KRS Chapter 13B.

22 (4) The denial or revocation of certification shall be effective upon the final
23 decision of the secretary pursuant to KRS Chapter 13B.

1 (5) If the denial or revocation is upheld by the secretary, the assisted-living
2 community shall cease to operate and the assisted-living community shall:

3 (a) Assist clients in locating alternate living arrangements pursuant to KRS
4 194A.705(4); and

5 (b) Ensure that all clients are relocated within thirty (30) days of final notice of
6 revocation or denial.

7 (6) The commissioner of the department shall have the authority to extend the
8 time limit specified in subsection (5)(b) of this section, not to exceed an additional fifteen
9 (15) days.

10 Section 13. Incorporation by Reference. (1) The following material is incorporated
11 by reference:

12 (a) "DAIL-ALC-1, Assisted-Living Community Certification Application", 06/2015;

13 (b) "DAIL-ALC-2, Assisted-Living Community Certification Check List", 10/2015;

14 (c) "DAIL-ALC-3, Assisted-Living Community Statement of Noncompliance and
15 Plan of Correction", 2/09; and

16 (d) "DAIL-ALC-4, Statement of Danger", 06/2015.

17 (2) This material may be inspected, copied, or obtained, subject to applicable
18 copyright law, at the Department for Aging and Independent Living, 275 East Main
19 Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

910 KAR 1:240

REVIEWED:

A handwritten signature in black ink, appearing to read 'Shannon Gadd', written in a cursive style.

Shannon Gadd, Commissioner Date
Department for Aging and Independent Living

APPROVED:

Adam Meier, Secretary Date
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 910 KAR 1:240
Contact Person: Phyllis W. Sosa
e-mail: Phyllis.sosa@ky.gov
Phone: (502) 564-6930

Chase Coffey
e-mail: CHFSregs@ky.gov
Phone: 502-564-6746

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the initial and annual certification review process for assisted living communities including the on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, the appeal process, and the application and certification fees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the requirements for certification of assisted-living communities including resident eligibility, application, application review, components of the lease agreement, living unit and physical plant requirements, live safety code requirements, employee requirements, services, and the application and certification fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the composition and functions of the assisted-living community certification requirements as specified in KRS 194A.700-729.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the standards of certification for the certification of assisted-living communities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds the application and certification fees to 910 KAR 1:240 in compliance with 194A.707(9) (effective July 1, 2019), corrects the name of the nurse aid registry and makes technical corrections to the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to continue to assess fees associated with the application and certification of new and existing assisted living communities. During the 2018 legislative session, the fees established in KRS 194A.707(9) were removed, and the cabinet was granted authority to promulgate administrative regulations to establish the assisted-living community certification fees, not to exceed costs of the program to the cabinet.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing application and certification fees in compliance with KRS 194A.707(9).

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes the application and certification fees for assisted living community certification, and will assist in offsetting the program deficit. The department has been operating the assisted living community certification process since July 2000. The fees have remained the same since the program's inception, and the department operates the program in a deficit. The amendment to this administrative regulation will increase the fees to assist in offsetting most of the deficit. The total cost of operating the assisted living certifications, based on FY 18 budget, is \$356,827.89. The fees as amended will generate \$355,220.00. The program will still operate at a small deficit of \$1,607.89.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the 124 certified assisted living communities and three (3) communities that have applied for initial certification.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities affected by this administrative regulation will not have any additional requirements placed upon them. They will continue to submit the application and certification fees as currently required. They will have an increase in fees due to the deficit that the program currently sustains, as the certification fees have not been increased since the inception of the certification requirements in July 2000.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees will be increased. Currently all applicants pay \$20 per living unit with a minimum of \$300 and a maximum of \$1,600. This amendment includes an application fee for initial certification of \$1,000, an annual application fee of \$500, and a certification per living unit of \$60 for initial and renewal applications. This increase is based upon the expenditures of the department to operate the application and certification process for assisted living communities statewide.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amended administrative regulation, assisted living communities will continue to have an initial review and annual review, to ensure compliance with the requirements of KRS 194A.700-194A.729 and this administrative regulation. Compliance with the requirements allows the business entity to continue to market, advertise, and operate as an assisted living community.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The cost to implement the amendment to this administrative regulation is \$356,827.89 annually and may fluctuate dependent upon new applications for certification and where they are located within the state.

(b) On a continuing basis: The cost to implement the amendment to this administrative regulation is \$356,827.89 annually and may fluctuate dependent upon new applications for certification and where they are located within the state.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sole funding source for the implementation and ongoing enforcement of this administrative regulation is the initial and annual application and certification fees obtained from the assisted living communities.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment is solely to establish the application and certification fees in this administrative regulation, due to the change in KRS 194A.707(9) giving the cabinet authority to establish the fees by administrative regulation, not to exceed the cost of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment is solely to establish the application and certification fees in this administrative regulation, due to the change in KRS 194A.707(9) giving the cabinet authority to establish the fees by administrative regulation, not to exceed the cost of the program. The fees have been increased from what had been allowed in KRS 194A.707(9) as established in 2000 due to the department having operated this program and sustaining a deficit since its inception.

(9) TIERING: Is tiering applied? (*Explain why or why not*) Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation: 910 KAR 1:240
Contact Person: Phyllis W. Sosa
e-mail: Phyllis.sosa@ky.gov
Phone: (502) 564-6930

Chase Coffey
e-mail: CHFSregs@ky.gov
Phone: 502-564-6746

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
The Cabinet for Health and Family Services, Department for Aging and Independent Living.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

The statutes that authorize the action taken by this administrative regulation are KRS 194A.050(1); 194A.707(1) and (9).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate an estimated \$355,220.00 for CHFS in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate an estimated \$355,220.00 for CHFS in subsequent years. This is dependent upon the total number of assisted living communities that apply for initial or annual certification.

(c) How much will it cost to administer this program for the first year? The department currently operates the assisted living community certification application and review process at a cost of \$356,827.89.

(d) How much will it cost to administer this program for subsequent years? The cost to operate in subsequent years is dependent upon the number of applicants, the number of units to be certified, and the location of the assisted living community applying. If the number remains constant, the cost to operate will remain at \$356,827.89.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation: 910 KAR 1:240
Contact Person: Phyllis W. Sosa
e-mail: Phyllis.sosa@ky.gov
Phone: (502) 564-6930

Chase Coffey
e-mail: CHFSreg@ky.gov
Phone: 502-564-6746

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the initial and annual certification review process for assisted living communities including the on-site visit and procedures related to applying for, reviewing, and approving, denying, or revoking certification, the appeal process and establishes the application and certification fees.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide the requirements for certification of assisted-living communities including resident eligibility, application, application review, components of the lease agreement, living unit and physical plant requirements, live safety code requirements, employee requirements, services, and the application and certification fees.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation complies with the composition and functions of the assisted-living community certification requirements as specified in KRS 194A.700-729.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth the standards of certification for the certification of assisted-living communities.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment adds the application and certification fees to 910 KAR 1:240 in compliance with 194A.707(9) (effective July 1, 2019), corrects the name of the nurse aid registry and makes technical corrections to the administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to continue to assess fees associated with the application and certification of new and existing assisted living communities. During the 2018 legislative session the fees established in 194A.707(9) were removed, and authority to promulgate administrative regulations to establish the assisted-living community certification fees, not to exceed costs of the program to the cabinet was added.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by establishing application and certification fees in compliance with 194A.707(9).

(d) How the amendment will assist in the effective administration of the statutes: The amendment establishes the application and certification fees for assisted living community certification, and will assist in offsetting the program deficit. The department has been operating the assisted living community certification process since July 2000. The fees have remained the same since the program's inception and the department operates the program in a deficit. The amendment to this administrative regulation will increase the fees to assist in offsetting most of the deficit. The total cost of operating the assisted living certifications, based on FY 18 budget, is \$356,827.89 and the fees as amended in the amended after comment regulation will generate \$353,030.00 instead of the original proposal that would have generated \$355,220.00. The program will still operate at a small deficit of \$3,797.00\$ rather than the initial deficit of 1,607.89.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects the 126 certified assisted living communities and one (1) community that has applied for initial certification.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The entities affected by this administrative regulation will not have any additional requirements placed upon them. They will continue to submit the application and certification fees as currently required. They will have an increase in fees due to the deficit that the program currently sustains as the certification fees have not been increased since the inception of the certification requirements in July 2000.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The fees will be increased. Currently all applicants pay \$20 per living unit with a minimum of \$300 and a maximum of \$1,600. This amendment includes an application fee for initial and annual certification based on the number of units certified and a certification per living unit of \$40. The initial proposal was establishing a flat rate application fee for all assisted livings for an initial application of \$1000 and for a renewal \$500 and all applicants to pay a \$60 per unit fee. Based on

the comments received through the public review period the Department has based the application fee on the number of certified units and reduced the per unit fee to \$40. The increase of the application and unit fees are based upon the costs to operate the application and certification process for assisted living communities statewide.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance with this amended administrative regulation, assisted living communities will be able to continue to apply for certification as an assisted-living community in Kentucky and have an initial review and annual review, to ensure compliance with the requirements of 194A.700-729 and this administrative regulation. Compliance with the requirements allows the business entity to continue to market, advertise, and operate as an assisted living community.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The cost to implement this administrative regulation is \$356,827.89 annually and may fluctuate dependent upon new applications for certification and where they are located within the state.

(b) On a continuing basis: The cost to implement this administrative regulation is \$356,827.89 annually and may fluctuate dependent upon new applications for certification and where they are located within the state.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sole funding source for the implementation and ongoing enforcement of this administrative regulation is the initial and annual application and certification fees obtained from the assisted living communities.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: This amendment is solely to establish the application and certification fees in this administrative regulation, due to the change in KRS 194A.707(9) giving authority to establish the fees by regulatory authority, not to exceed the cost of the program.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This amendment is solely to establish the application and certification fees in this administrative regulation, due to the change in KRS 194A.707(9) giving authority to establish the fees by regulatory authority, not to exceed the cost of the program. The fees have been increased from what had been allowed in 194A.707(9) as established in 2000 due to the department having operated this process and sustaining a deficit since its inception. The proposed fee structure will off set the department deficit obtaining in operating the certification program, but the department will continue to have a small deficit in this program.

(9) TIERING: Is tiering applied? (*Explain why or why not*) Tiering is not applied, because this administrative regulation will be applied in a like manner statewide.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation: 910 KAR 1:240
Contact Person: Phyllis W. Sosa
e-mail: Phyllis.sosa@ky.gov
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Chase Coffey
e-mail: CHFSregs@ky.gov
Phone: 502-564-6746

- (1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?
The Cabinet for Health and Family Services, Department for Aging and Independent Living.
- (2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.
The statutes that authorize the action taken by this administrative regulation are KRS 194A.050(1); 194A.707(1) and (9).
- (3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will generate an estimated \$353,030.00 for the CHFS in the first year.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will generate an estimated \$353,030.00 for the CHFS in subsequent years. This is dependent upon the total number of assisted living communities that apply for initial or annual certification.
 - (c) How much will it cost to administer this program for the first year? The department currently operates the assisted living community certification application and review process at a cost of \$356,827.89.
 - (d) How much will it cost to administer this program for subsequent years? The cost to operate in subsequent years is dependent upon the number of applicants, the number of units to be certified, and the location of the assisted living community applying. If the number remains constant, the cost to operate will remain at \$356,827.89.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):
Expenditures (+/-):
Other Explanation:

STATEMENT OF CONSIDERATION RELATING TO
910 KAR 1:240
Department for Aging and Independent Living

Amended After Comments

- (1) The public hearing on 910 KAR 1:240, was not requested or held.
- (2) The following people submitted written comments via the public comment process:

<u>NAME AND TITLE</u>	<u>AGENCY/ORGANIZATION/ENTITY/OTHER</u>
Elizabeth "Betsy" Johnson, President/Executive Director	Kentucky Association of Health Care Facilities and Kentucky Center for Assisted Living

- (3) The following people from the promulgating administrative body responded to the written comments:

<u>NAME AND TITLE</u>	
Shannon Gadd Commissioner	Department for Aging and Independent Living Cabinet for Health and Family Services
Janet Hall Director	Department for Aging and Independent Living Cabinet for Health and Family Services
Amy Metzger Assistant Director	Department for Aging and Independent Living Cabinet for Health and Family Services
Phyllis Sosa Staff Assistant	Department for Aging and Independent Living Cabinet for Health and Family Services

SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) **Subject: Nonrefundable Application Fee**

(a) Comment: Ms. Johnson states "the Association opposes the significant increase in assisted living application fees, which could deter an individual or corporation from doing business in the Commonwealth and more importantly provide services to the elderly of Kentucky. The proposed fees would represent a 300% increase in application costs for a provider seeking to establish a 50 unit assisted living community in Kentucky. Again, a 300% increase for a new provider over what previous providers paid to establish a 50 unit community."

(b) Response: The Department understands the fee increase is significant based on the fees having remained unchanged since the program's inception in July 2000.

The Department has operated the assisted-living community certification program in a deficit for years and there are no dollars to offset the deficit created by this program. In order to keep the cost unchanged or at a lower rate the Department has only community based programs to divert funding from to support this program. It is not justifiable to sacrifice direct care programs such as home delivered meals and in-home care services for older Americans to support the certification of assisted-living communities.

(a) Comment: Ms. Johnson states the \$1,000 flat fee “creates a disparate impact based on a community’s size and their ability to absorb such costs. The fee increase is not equitable in that the impact of the proposed fee increases to an assisted living community with 30 units would be dramatically different from a community with 60 units.”

(b) Response: In response to Ms. Johnson’s, comment that the flat rate creates an unfair impact on the smaller communities the Department agrees to amend the administrative regulation to charge an application fee according to the number of units the assisted-living communities operate. The fee will be changed from \$60 per unit to \$40 per unit and the following flat fee based on units:

Number of Units	Application Fee
100+	\$2000
75 – 99	\$1750
50 - 74	\$1500
25 - 49	\$1000
< 25	\$500

(a) Comment: Ms. Johnson laid out a table of fee’s for a 50 unit community in surrounding states regarding the initial application fee and illustrating why the Association opposes the “significant application fee proposed by the cabinet”

(b) Response: The Department looked at other states and other levels of care within Kentucky prior to setting the proposed rates. It is difficult at best to try to compare assisted-living in Kentucky with other states because Kentucky operates as a social model not a health model. All of Kentucky’s assisted-livings are private pay with an average of 40 units and an average monthly revenue of \$3300.00 per unit not including additional fees charged based on assistance provided to the individuals. Assisted-living’s in Kentucky are not capped at what they may charge an individual based on Medicaid or Medicare rates.

(2) Subject: Annual Application and Certification Fee

(a) Comment: Ms. Johnson states “The Association does not believe the increase for the annual certification review is reasonable. Currently, a 50 unit assisted living

community in Kentucky pays \$1000.00 annually. The proposed changes would increase the cost of a 50 unit assisted living community to \$3500 annually, which is a 250% increase. Again the certification fee increase is not equitable in that the financial impact will be dramatically different based upon the number of assisted living units – and the \$500 flat fee is also a ‘one size fits all’ fee that creates a disparate impact based on community’s size and their ability to absorb such costs. Ms. Johnson recommends changing “the nonrefundable Application Fee to \$500.00 base fee and an incremental change of \$20.00 per unit in 2019, \$40.00 in 2020, \$60.00 in 2021.” Ms. Johnson recommends to “Change the annual application and certification fee incrementally over the next four (4) years to \$30.00 per unit in 2019, \$40.00 per unit in 2020, \$50 per unit in 2021 and \$60 per unit in 2022. Change the nonrefundable annual application and certification base fee to \$250 in 2019 and \$500 in 2020

(b) Response: The Department has not increased the fees for certification of assisted-living communities since the program’s inception in July 2000. The Department cannot absorb the costs associated with the certification program and the deficit has been detrimental to in home services provided to Older Kentuckians. The tax payers of Kentucky should not be responsible to support certification of private care facilities.

The Departments only funding source for the assisted-living certification program is through the collection of application fees. The proposed increase in fees brings helps with covering the costs but the Department will still be operating with a small deficit. Had the Department been able to increase the fees according to the cost of living increase over the last 19 years the cost per unit fee would be \$77.00. The processing of applications and conducting on-site certification reviews is time consuming and requires three (3) full time staff that cover the entire state to spend countless hours traveling and on-site at the communities. In addition, the three (3) staff members conduct complaint investigations that require extensive travel and time. Because Kentucky is a social model the Office of Inspector General nor the Long Term Care Ombudsman Program are involved in assisting with complaints, resolution of complaints or investigations.

Based on Ms. Johnsons comments that the flat rate fee would be detrimental to the smaller communities the Department is willing to amend the proposed regulation to establish the per unit fee of \$40.00 rather than \$60.00 and base the application fee (initial and annual) on the number of units according to the following chart:

Number of Units	Application Fee
100+	\$2000
75 – 99	\$1750
50 - 74	\$1500
25 - 49	\$1000
< 25	\$500

SUMMARY OF STATEMENT OF CONSIDERATION
AND
ACTION TAKEN BY PROMUGATING ADMINISTRATIVE BODY

The Department for Aging and Independent Living is amending this administrative regulation in response to public comments received.

Page 4

Section 2(1)(e)

Lines 3 - 5

After "fee" insert "for applications submitted for certification beginning July 1, 2019 shall be"

After 1. insert "Forty (40)"

Delete "in the amount of \$1,000 plus sixty (60)"

Line 7 - 13

After "Certification Application," insert "in addition to the following fee schedule:

(a) 100 or more units \$2000;

(b) 75 – 99 units \$1750;

(c) 50 – 74 units \$1500;

(d) 25 – 49 units \$1000;

(e) < 25 units \$500

Delete "for applications submitted for certification beginning July 1, 2019"

Page 5

Section 3(2)(c)

Line 7 -13

After "amount of" insert "Forty (40)"

Delete "\$500 plus sixty (60)"

After "certified unit" insert in addition to the following fee schedule:

1. 100 or more units \$2000;

2. 75 – 99 units \$1750;

3. 50 – 74 units \$1500;

4. 25 – 49 units \$1000;

5. < 25 units \$500